IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1365 OF 2006
IN
SUIT NO. 230 OF 2005

ABN AMRO BANK N.V. ...Plaintiff
Vs.
Taruna N. Parikh ...Defendant

Mr. Damel Arit i/b. M/s. Res Legal for Plaintiff
Mr.R.V. Pai i/b. A.A.Kocharekar for Defendant

CORAM: SMT. ROSHAN DALVI, J.
DATED: 1ST MARCH, 2007

P.C.

1. The Plaintiff Bank took the premises of the Defendant on license. The Plaintiff Bank returned the possession of the premises to the Defendant before the expiry of the License. The Defendant did not return the deposit of Rs.1.15 Crores paid by the Plaintiff. Hence, the suit was filed.

2. In the interim relief claimed by the Plaintiff in the Notice of Motion No.275 of 2005 an order came to be passed on 16th

March, 2006 showing the aforesaid admitted position. It was observed that "the Defendant is presently having best of both the worlds. She is keeping huge amount which was paid by the Plaintiffs as deposit and she is also enjoying possession of the flat". Consequently the appointment of the Court Receiver was ordered being fit and just. The Plaintiff' s Notice of Motion was granted in terms of prayer clause (b) excluding its bracketed portion. The Defendant was to pay royalty as the agent of the Court Receiver. The royalty was directed to be fixed on the basis of market rate.

3. The Court Receiver called upon the Valuer on the panel of the Court Receiver to fix the market rate. The market rate which was to be fixed was the rate at which the suit flat as also other similarly placed flats would go upon a similar contract.

4. The market rate is the rate at which the same or similar property would be utilised for a similar agreement in the market at the relevant time. In case of licensee it would be a rate which a willing Licensee would pay the Licensor who seeks to give his premises out on license.

5. It is seen that the amount of monthly compensation or

licence fee as also the amount of security deposit are the two relevant factors to determine the market rate of premises in the same building which are licensed.

6. Under suit contract which was a Leave and License Agreement dated 27th May, 2002, the Plaintiff had given a security deposit of Rs.1.15 Crores and was paying monthly compensation of Rs.15000/-.

7. In the same building in the next year the license fee was at the rate of Rs.40,000/- per month with Rs.25 Lakhs towards the interest free security deposit for an agreement entered into in August, 2003.

8. In the same building another similar agreement entered into on 29th December, 2005 yielded a monthly licence fee of Rs.28000/- with a security deposit of Rs.1.10 Crores as well as a Bank guarantee of Rs.2.50 Crores as additional security.

9. It is seen that the amount of monthly licence fee as well as the security deposit has consistently risen from the years 2002 to 2003 and 2005. The market rate which was to be determined was as per the order dated 16th March, 2006 and

has been determined in June, 2006.

10. In this case the security deposit paid by the Plaintiffs of Rs.1.15 Crores has been kept by the Defendant since May, 2002. It has not been returned when the possession was taken over by the Defendant. The Defendant therefore has that amount kept invested from 2002 until June, 2006 when the valuation was made. The Defendant earned interest thereon for those 4 years. The Defendant would continue to earn interest thereon pending the suit and/or pending the unexpired term of the licence.

11. It must be borne in mind that these factors have been considered by the Court when the Court Receiver came to be appointed and hence, the aforesaid observation was made, and the market rate was directed to be determined at which the Defendant, though the owner of the premises, was to pay royalty to the Court Receiver. The determination of that royalty amount must, therefore, be considered considering also the return on investment by way of the security deposit which remains with the Defendant.

12. It is seen that the rate of licence fee as well as the security deposit has risen in the same building from 2002 to

2005. It is common knowledge that the market rate of properties in Mumbai considerably rose in 2006. The Plaintiff's security deposit remained with the Defendant and continues to remain even now.

13. The nearest market rate of the License Agreement of December, 2005 is shown to be Rs.28000/- in the same building. The license fee of Rs.30,000/- in 2006 would be the most reasonable appreciation. Along with the license fee of Rs.28000/- in December, 2005 a security deposit of Rs.1.10 Crores as well as the Bank Guarantee of Rs.2.50 Crores for additional security was given for the flat in the same building. Therefore, in 2006 security deposit of Rs.1.50 Crores would be expected as a reasonable appreciation.

14. What must be borne in mind is that the Plaintiff's security deposit lies with the Defendant and she earns interest thereon. A reasonable prudent person would obtain 8% to 10% interest on such investment, even if the amount is not invested in equities which bear the usual marketable risks. The Reserve Bank of India bonds which is considered to be most secure of such investments fetch that amount. Consequently the market rate would be Rs.30,000/- per

month as licence fee plus 8% p.a interest earned on an investment of Rs.1.50 Crores which would be at the rate of Rs.1 Lakh per month. The reasonable market rate for the suit premises is therefore Rs.1.30 Lakhs. The Valuer has valued the suit premises at Rs.1.47 Lakhs. Though the valuation is scientifically, correctly done and in the usual course cannot be interfered with by the Courts, since this is a peculiar case of determining only the reasonable market rate for licensed premises, the determination of the Valuer with regard to the market value of the premises may require a slight modification as above.

15. The Defendant claims to pay Rs.35000/- per month as the royalty. That calculation is innately incorrect and wholly unacceptable. It is arrived at without taking into consideration the twin advantage which the Defendant is observed to be enjoying in the order appointing Court Receiver itself, which directed the fixation of royalty at the market rate and not merely upon seeing the licence fee paid by the other licensees. The valuation of the Valuer is therefore, only modified to Rs.1.30 Lakhs in the place of Rs.1.47 Lakhs.

16. The Defendant shall pay the arrears of royalty as from

the date of the order.

17. The Chamber Summons No.1365 of 2006 is disposed of accordingly.

(SMT.ROSHAN DALVI, J.)